IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.3618 OF 2006

1. Nashik District Co-operative Agricultural Rural Multi-purpose Development Bank Ltd., Opp: Shivaji Garden, Nashik.

2. Shri R.D. Kshirsagar, the Chairman, Rural Multi-purpose Development Bank Ltd., Opp: Shivaji Garden, Nashik. .... Petitioners

- Versus -

Shri Shankar Baluba Shinde, Age: 57 years, Occ: Service, r/o Plot No.A-14, Datta Nagar, Peth Road, Panchavati, Tanmay Housing Society, Nashik. .... Respondent

Ms Pritam Tendulkar i/b Shri M.S. Karnik for the Petitioners.

Shri R.L. Nerlekar for the Respondent No.1.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 14, 2006

ORAL JUDGMENT:

1. Heard. Rule. By consent, rule made returnable forthwith.

2. The petitioners challenge the order passed by the Industrial Court on 7-2-2006 in Complaint (ULP) No.3 of 2006.

3. Normally this Court is reluctant to interfere in the orders passed by the Courts below during the pendency of the proceedings. However, the impugned order has to be made an exception to this practice considering the fact that the impugned order apparently discloses not only jurisdictional error but unwarranted interference by the Industrial Court in the matter of transfer passed against the respondent from the place of his present posting to Dindori. The Industrial Court while trying to justify the interference in the order of transfer has observed that there had been no posting in the post in which the respondent has been transferred since December, 2002 and the same discloses that even in the absence of employee in the said post at Dindori, the establishment was functioning smoothly. It is not for the Courts to decide about the sufficiency of the number of employees at a particular place for an establishment. It is entirely for the management of that establishment to decide about the need of number of employees at a particular place which may be required to man the establishment at that particular place efficiently and making it commercially viable. Apart from the above observation, the Industrial Court has not been able to find any material being placed on record to hold that the transfer was mala fide and therefore the Industrial Court clearly erred in granting stay to the said

transfer order issued against the respondent.

4. It is sought to be contended on behalf of the respondent that the respondent is at the fag end of his service tenure and therefore the order of transfer should not be implemented. In the absence of any service condition which prohibits the management from transferring the employee, merely because he is at the fag end of his service tenure in the employment of a particular management, the transfer order cannot be stayed on the alleged ground.

5. The transfer is an incidence of service and it can be stayed only on the ground when the employee is able to make out a case of mala fide exercise of power by the management in issuance of the order of transfer. In the absence of any material disclosing mala fide on the part of the management in issuing such order, question of interference by any Court cannot arise. It cannot be said to be unfair labour practice without any mala fide intention being disclosed on the part of the management in ordering the transfer of the employee. On this ground itself, the impugned order cannot be sustained and is liable to be set aside.

6. Hence the petition succeeds; the impugned order is hereby quashed and set aside. The rule is made absolute

accordingly with no order as to costs.

(R.M.S. Khandeparkar, J.)

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